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**ARKANSAS
PUBLIC SERVICE COMMISSION**

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July 17, 1997



DOCKET FILE COPY ORIGINAL

Mr. William Caton, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

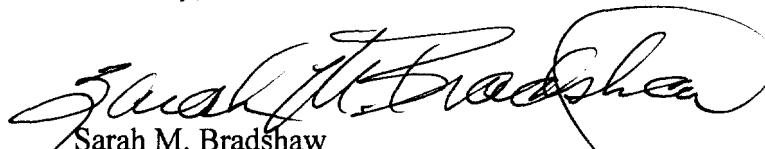
Re: In the Matter of Federal-State Joint Board on Universal Service,
CC Docket No. 96-45

Dear Mr. Caton:

Enclosed please find an original and six copies of the Arkansas Public Service Commission's Petition for Waiver on universal service. Please return a file-marked copy in the enclosed stamped self-addressed envelope.

Your courtesy and cooperation in this matter are appreciated.

Sincerely,


Sarah M. Bradshaw
Deputy Chief Administrative Law Judge

SMB/ky

Encl.

cc: Ms. Sheryl Todd
Common Carrier Bureau
Federal Communications Commission
2100 M Street, N.W., Room 8611
Washington, D.C. 20554

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Washington, D.C. 20037

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Federal-State Joint Board on
Universal Service

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CC Docket No. 96-45

PETITION FOR WAIVER

The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (Act) provides discount rates on designated telecommunications services for eligible schools and libraries. Specifically, Section 254(h)(1)(B) provides that the discount shall be an amount that the Federal Communications Commission (FCC), with respect to interstate services, and the states, with respect to intrastate services, determine is appropriate and necessary to ensure affordable access to and use of such services by such entities.

On May 8, 1997 the FCC issued its Report and Order, CC Docket 96-45, Order No. 97-157 (Order) implementing key portions of section 254 of the Act which addresses universal service. The Order identifies interstate and intrastate services to be discounted, sets forth the discount levels for interstate services, and states that the funding will begin January 1, 1998. Schools and libraries must file applications to be eligible for discounts. In addition, 47 C.F.R. §54.505(e)(1), states that funding of discounts for those interstate and intrastate services for schools and libraries is contingent upon the establishment of intrastate discounts no less than the discounts applicable for interstate services. 47 C.F.R. §54.505(e)(2) provides that a state may secure a temporary waiver of the intrastate discount requirement based on unusually compelling conditions.

The FCC has authority to waive its rules if there is good cause shown, 47 C.F.R. §1.3

(1996). The FCC may exercise its authority to waive a rule where particular facts would make strict compliance inconsistent with the public interest. WAIT Radio v. FCC, 418 F2d 1153, 1159 (D.C. Cir. 1969). In WAIT Radio the court held that a waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.

The Arkansas Public Service Commission (APSC) entered an order on June 13, 1997, directing those local exchange telecommunications providers subject to rate regulation by the APSC to file tariffs that provide the federally mandated discounts for intrastate services provided to eligible schools and libraries. A copy of the APSC order is attached hereto as Appendix A. Pursuant to 1997 Ark. Act 77 (Act 77), the APSC has no jurisdiction over the rates, tariffs or charges of those local exchange telecommunication providers that have elected an alternative form of rate regulation. Twenty-one of the twenty-six incumbent local exchange carriers operating in Arkansas, including Southwestern Bell Telephone Company, the largest local exchange carrier in the state, are not subject to the APSC's order to adopt the federally mandated discounts for intrastate services provided to eligible schools and libraries.¹

Act 77 which exempts electing local exchange telecommunications providers from rate regulation by the APSC, was enacted on February 4, 1997. The Arkansas General Assembly adjourned on May 3, 1997, and the General Assembly will not meet again in general session until the year 1999. In order to protect the interests of schools and libraries in the State of Arkansas, the APSC requests a waiver of the FCC's 47 C.F.R. §54.505(e)(1) discount requirements to allow time for the Arkansas General Assembly to consider the issue of discounted rates for intrastate services provided to eligible schools and libraries.

¹Pursuant to §5(d) of Act 77, "for the purpose of . . . the federal universal service fund, there shall be only one eligible telecommunications carrier which shall be the incumbent local exchange carrier that is a rural telephone company." Twenty-four incumbent local exchange companies operating in Arkansas are rural.

The special circumstances that exist under Arkansas law warrant a deviation from the general rule. A temporary waiver serves the public interest by assuring federal universal service support for eligible schools and libraries in Arkansas.

WHEREFORE, the Arkansas Public Service Commission requests a waiver of the section 54.505(e)(1) requirement under 47 C.F.R. §1.3 (1996) and under section 54.505(e)(2) to allow the Arkansas General Assembly to consider the issue of intrastate discounts.

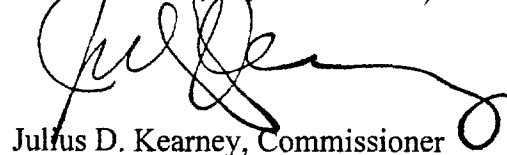
Respectfully submitted this _____ day of July, 1997.



Lavenski R. Smith, Chairman



Sam I. Bratton, Jr., Commissioner



Julius D. Kearney, Commissioner

ARK. PUB. FORM.
SEC. FORM.

JUN 13 9 09 AM '97

**IN THE MATTER OF COMPLIANCE)
WITH 47 CFR §54.505 ESTABLISHING)
DISCOUNTED TELECOMMUNICATIONS)
SERVICES FOR ELIGIBLE SCHOOLS AND)
LIBRARIES)**

DOCKET NO. 97-236-U
ORDER NO. 1

Section 254(h)(1)(B) of the Telecommunications Act of 1996 (1996 Act) provides, in part:

[a]ll telecommunications carriers serving a geographic area shall, upon a bona fide request for any of its services that are within the definition of universal service under subsection (c)(3), provide such services to elementary schools, secondary schools, and libraries for educational purposes at rates less than the amounts charged for similar services to other parties.

The statute further provides that the discount shall be an amount that the Federal Communications Commission (FCC) sets for interstate services and the States set with respect to intrastate services appropriate and necessary to ensure affordable access to and use of such services.

On May 8, 1997, the FCC released its *Report and Order* in CC Docket No. 96-45 adopting final rules implementing section 254 of the 1996 Act. 47 CFR §54.505(b) establishes the interstate discount for eligible schools and libraries ranging from 20 percent to 90 percent of the pre-discount price for all eligible services provided by eligible providers. The discounts available to a particular school, library, or consortium of only such entities shall be determined

by indicators of poverty and high cost. Subsection (b)(1) provides that, for schools and school districts, the level of poverty shall be measured by the percentage of their student enrollment that is eligible for a free or reduced price lunch under the national school lunch program or a federally-approved alternative mechanism. Subsection (b)(2) provides that, for libraries and library consortia, the level of poverty shall be based on the percentage of the student enrollment that is eligible for a free or reduced price lunch under the national school lunch program or a federally-approved alternative mechanism in the public school district in which they are located. If the library is not in a school district, then its level of poverty shall be based on an average of the percentage of students eligible for the national school lunch program in each of the school districts that children living in the library's location attend.

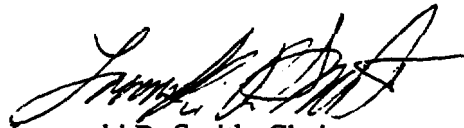
47 CFR §54.505(e) provides that federal universal service support for schools and libraries shall be provided for both interstate and intrastate services. Federal universal service support for eligible schools and libraries is contingent upon the establishment of intrastate discounts no less than the discounts applicable for interstate services. Therefore, pursuant to the directives of the 1996 Act and 47 CFR §54.505, all local exchange carriers (LECs) that have not elected to be regulated pursuant to either §6 or §12 of 1997 Ark. Act 77 are hereby directed to file tariffs in this docket not later than August 1, 1997, that provide the federally mandated discounts for intrastate services provided to schools and libraries.¹

¹Act 77 prohibits the Commission from ordering electing LECs to offer such discounted service. However, the Commission encourages these LECs to offer such service to schools and libraries at the discounts established by the FCC.

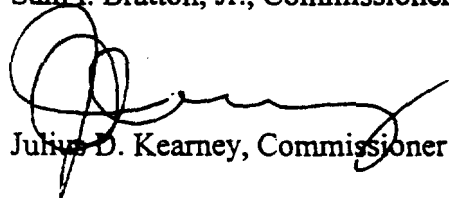
47 CFR §54.505(c) provides a matrix to be used in setting a discount rate to be applied to eligible interstate services and facilities purchased by eligible schools, school districts, libraries, or library consortia based on the institution's level of poverty and location in an "urban" or "rural" area. That matrix is attached to this Order as Appendix A.


BY ORDER OF THE COMMISSION.

This 13th day of June, 1997.


Lavenski R. Smith, Chairman


Sam I. Bratton, Jr., Commissioner


Julius D. Kearney, Commissioner


Jan Sanders
Secretary of the Commission

SCHOOLS & LIBRARIES DISCOUNT MATRIX	DISCOUNT LEVEL	
HOW DISADVANTAGED? _____ % of students eligible for national school lunch program	urban discount	rural discount
< 1	20	25
1 - 19	40	50
20 - 34	50	60
35 - 49	60	70
50 - 74	80	80
75 - 100	90	90

Appendix A